

Award No. 832  
Docket No. 755  
2-D&RGW-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER & RIO GRANDE WESTERN RAILROAD  
COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Working Foreman Machinist V. A. Taylor be compensated at the rate of at least 86¢ per hour straight time for straight time hours and overtime for overtime hours, beginning September 16, 1940, in accordance with the provisions of Rules 6 and 103, Agreement dated September 1, 1940.

**EMPLOYEES' STATEMENT OF FACTS:** Machinist V. A. Taylor, employed as working foreman at Marysvale, Utah, on a ten-hour assignment is required to make daily inspections, maintain and make repairs to locomotives and other equipment during his regular tour of duty each day. On various occasions, he is required to work as much as sixteen hours each day due to the increase in the volume of work for which he receives only \$150.00 per month.

In performing his regular tour of duty each day, he is required to use the tools of the trade.

**POSITION OF EMPLOYEES:** In the agreement dated September 1, 1940, the carrier has agreed that certain rates of pay shall be paid to the various classes of employes engaged in performing certain work as covered by the special rules of each craft. It, therefore, develops that the work of inspecting, maintaining and making repairs to locomotives and other equipment as defined in Rule 46 shall be paid in accordance with the following rule:

**RULE 103**

"The following are the agreed to minimum hourly rates of pay and constitute the least which will be paid to the various classifications of employes covered by this agreement:

Art.	Classification of Employes	Agreed to Minimum rates per Hour
1.	Machinists .....	\$0.86
	Etc.	Etc."

The foregoing conclusively sets out the least amount which shall be paid to the various classes of employes engaged in performing certain types of work as covered by this agreement. It, therefore, is the assumption of the

Any man who has served an apprenticeship, or has had four (4) years' experience at the machinists' trade, and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawings, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing or adjusting the metal parts of any machine or locomotive, shall constitute a machinist.

Foreman Taylor's record indicates no qualifications under the provisions of this rule.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

It is clear from the evidence of record that Taylor is primarily a working foreman and not a machinist, and that neither Rule 12 nor any other rule of the agreement governs the compensation to be paid to foremen.

In these circumstances there is no basis for the claim of the employes, even if it were found that the Second Division might properly exercise jurisdiction over disputes involving foremen.

In this instance it was essential that jurisdiction be assumed for the purpose of determining whether Taylor is a machinist or a foreman; and since there is no rule in the agreement governing the compensation of foremen, it is unnecessary to decide whether the Second Division could properly exercise jurisdiction under other circumstances.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.